

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs April 5, 2006 Session

RONALD K. PENDERGRAPH v. JULIANA T. (BATES) PENDERGRAPH

Appeal from the Chancery Court for Bledsoe County
No. 2828 Jeffrey F. Stewart, Chancellor

No. E2005-01458-COA-R3-CV - FILED MAY 30, 2006

Ronald K. Pendergraph (“Husband”) sued Juliana T. (Bates) Pendergraph (“Wife”) for a divorce by filing a complaint in the Chancery Court for Bledsoe County (“the Chancery Court”). Wife made no appearance in the case. Husband filed a motion for a default judgment and numerous other motions. The Chancery Court dismissed the case for lack of venue. Husband appeals to this Court claiming, in part, that the Chancery Court erred in dismissing his case and in failing to rule on Husband’s pending motions. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;
Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Ronald K. Pendergraph, Pikeville, Tennessee, pro se Appellant.

Juliana T. (Bates) Pendergraph, Smithville, Tennessee, pro se Appellee¹.

MEMORANDUM OPINION²

¹Wife made no appearance in this case either at the Chancery Court level or at the appellate level and filed no appellate brief.

² Rule 10 of the Rules of the Court of Appeals provides: “This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated ‘MEMORANDUM OPINION,’ shall not be published, and shall not be cited or relied on for any reason in any unrelated case.”

Background

Husband, who is confined in the Southeastern Tennessee State Regional Correction Facility in Pikeville, Tennessee and has been from before the inception of this lawsuit, filed a complaint on May 21, 2003, seeking a divorce from Wife in the Chancery Court. Wife apparently was served with the complaint, but made no appearance whatsoever in this action. On July 16, 2003, Husband filed a motion for a default judgment. Husband also filed numerous other motions in the case including, among others, a Motion to Render Decision, a Motion to Enter Final Decree, and a Petition for Writ of Habeas Corpus Ad Testificandum.

By order entered June 15, 2005, the Chancery Court dismissed Husband's complaint for lack of venue finding and holding, *inter alia*, that "[Wife] is a resident of Smithville, Tennessee, and not Bledsoe County, Tennessee, and that she is neither a non-resident nor a convict of the state. According to the [Husband's] sworn statement, the parties was (sic) not resident's (sic) of Bledsoe County and their separation were (sic) not in Bledsoe County, Tennessee."

Husband appeals the dismissal of his complaint to this Court.

Discussion

Although not stated exactly as such, Husband raises three issues on appeal: 1) whether the Chancery Court erred in dismissing Husband's complaint for lack of venue; 2) whether the Chancery Court erred in failing to rule on Husband's motion for default judgment; and, 3) whether the Chancery Court erred in failing to rule on Husband's other pending motions.

We first consider whether the Chancery Court erred in dismissing Husband's complaint for lack of venue. We review a dismissal of a case for lack of venue, as we do all questions of law, *de novo* with no presumption of correctness. *Lanius v. Nashville Elec. Serv.*, 181 S.W.3d 661, 663 (Tenn. 2005).

Tennessee Code Annotated § 36-4-105 instructs how to determine the proper venue in divorce actions and states, in pertinent part:

36-4-105. Venue. – (a) The bill or petition may be filed in the proper name of the complainant, in the chancery or circuit court or other court having divorce jurisdiction, in the county where the parties reside at the time of their separation, or in which the defendant resides, if a resident of the state; but if the defendant is a nonresident of the state or a convict, then in the county where the applicant resides.

Tenn. Code Ann. § 36-4-105 (a) (2005).

As this Court noted in *Ferguson v. Ferguson*: “Venue is the personal privilege of a defendant to be sued in particular counties; it may be waived and is waived by a defendant who defends upon the merits without first interposing an objection to improper venue.” *Ferguson v. Ferguson*, No. M2001-01836-COA-R3-CV, 2002 Tenn. App. LEXIS 775, at **5-6 (Tenn. Ct. App. Nov. 1, 2002) (citing *Corby v. Matthews*, 541 S.W.2d 789 (Tenn. 1976)).

In his complaint, Husband swears that he and Wife separated in Smithville, Tennessee, which is in DeKalb County, Tennessee. Wife was served with the complaint at her address in Smithville, Tennessee. As Wife is a resident of Tennessee, venue is proper pursuant to Tenn. Code Ann. § 36-4-105 in either the county where the parties resided at the time of their separation, or the county in which Wife resides. In this case, the parties resided in DeKalb County when they separated and Wife still resides in DeKalb County. Thus, the proper county for purposes of venue in this action is DeKalb County.

As Wife made no appearance whatsoever in this action, she has not waived venue. We further note that even if Wife had in some way waived venue, which she has not given the record before us, “parties cannot, by waiver of improper venue, compel a court, not otherwise vested with venue, to entertain their suit.” *Id.* at *7.

Pursuant to Tenn. Code Ann. § 36-4-105, proper venue for this action lies in DeKalb County. Husband filed his complaint in Bledsoe County, an improper venue. We, therefore, affirm the Chancery Court’s dismissal of Husband’s complaint for lack of venue. Our holding on this issue pretermits the necessity of considering the remaining issues raised in this appeal. This case is remanded to the Chancery Court without prejudice to Husband’s rights to seek a transfer of this case to a court having divorce jurisdiction in DeKalb County.

Conclusion

The judgment of the Chancery Court is affirmed, and this cause is remanded to the Chancery Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Ronald K. Pendergraph, and his surety.

D. MICHAEL SWINEY, JUDGE